

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>LARRY CARTER,</b>	)	<b>CASE NO. 8:06CV603</b>
	)	
<b>Plaintiff,</b>	)	
	)	<b>ORDER</b>
<b>v.</b>	)	
	)	
<b>THE ADVISORY GROUP, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the Plaintiff's Statement of Appeal of Magistrate Judge's Order. (Filing No. 138). Plaintiff is appealing Magistrate Judge Gossett's order of June 18, 2008 (Filing No. 136), denying the Plaintiff's Motion for Leave to Amend Complaint (Filing No. 128).

On May 28, 2008, the Plaintiff sought leave of the Court to file an amended complaint, a copy of which was attached to the motion (Filing No. 128). Magistrate Judge Gossett granted Plaintiff's subsequent Motion for Leave to File Brief Out of Time (Filing No. 129) and deemed the attached brief timely filed instanter (Filing No. 132). The Defendant filed a brief in opposition to the motion to amend (Filing No. 133), and Magistrate Judge Gossett issued an order denying the motion on June 18, 2008 (Filing No. 136). The Plaintiff filed a Statement of Appeal of Magistrate Judge's Order Regarding Jury Trial along with supporting brief on June 25, 2008 (Filing Nos. 138 & 139).

Under NECivR 72.2(a), a party may appeal a nondispositive order entered in a civil case by filing a "Statement of Appeal of Magistrate Judge's Order" within ten days after being served with the order. The party must specifically state the order or portion thereof appealed from and the basis of the appeal, and must file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. Unless otherwise ordered, any opposing party

may file a brief opposing the appeal within ten days of being served with the statement of appeal.

“The district judge to whom the case is assigned . . . shall modify or set aside any portion of the magistrate judge’s order found to be clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a). “The district judge will not modify, set aside, or remand to the magistrate judge any nondispositive order or portion thereof unless clearly erroneous or contrary to law.” NECivR 72.2(c).

I have reviewed Plaintiff’s Motion for Leave to Amend Complaint and Supporting Brief (Filing Nos. 128 & 129), Defendant’s brief in opposition (Filing No. 133), Magistrate Judge Gossett’s order denying Plaintiff’s motion for leave to amend (Filing No. 136), Plaintiff’s Statement of Appeal of Magistrate Judge’s Order (Filing No. 138), and its brief in support of that appeal (Filing No. 139). I will not await a response by the Defendant due to the parties’ need to prepare for the July 15, 2008, jury trial with certainty as to the issues for trial, and due to the direction of my ruling. I conclude that Magistrate Judge Gossett’s order (Filing No. 136), denying the Plaintiff’s Motion for Leave to Amend Complaint, was neither clearly erroneous nor contrary to law. Moreover, I concur with Magistrate Judge Gossett’s reasoning and his conclusion.

IT IS ORDERED:

1. The Plaintiff’s Statement of Appeal of Magistrate Judge’s Order (Filing No. 138) is denied; and
2. The Magistrate Judge’s June 18, 2008, Memorandum and Order (Filing No. 136) is affirmed.

Dated this 26<sup>th</sup> day of June, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge